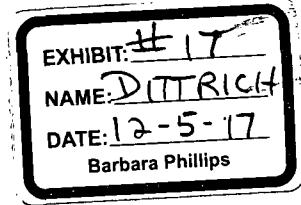


UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CHAD MCFARLIN, Individually and on  
behalf of similarly situated persons,



Plaintiff,

No. 2:16-cv-12536-GAD-APP

Hon. Gershwin A. Drain

v

THE WORD ENTERPRISES, LLC,  
THE WORD ENTERPRISES HASLETT,  
LLC, THE WORD ENTERPRISES  
LANSING, LLC, THE WORD  
ENTERPRISES OWOSSO, LLC, THE  
WORD ENTERPRISES PERRY, LLC,  
THE WORD ENTERPRISES ST.  
JOHNS, LLC and KEVIN DITTRICH,

Defendants.

AFFIDAVIT OF MICHELE FOLLMAN

STATE OF MICHIGAN                )  
  )  
  ss  
COUNTY OF INGHAM                )

Michele Follman, being duly sworn, deposes and states as follows:

1. I am more than eighteen years of age, and would be competent to testify to the facts and matters stated herein of my own personal knowledge if called upon to do so.

2. I am employed as an Area Director by Kevin Dittrich. My responsibilities include supervising the General Manager and operations at The

DEX04636

Word Enterprises – Perry, LLC (“TWE-Perry”), The Word Enterprises – Haslett, LLC (“TWE-Haslett”), and The Word Enterprises – St. Johns, LLC (“TWE-St. Johns”).

3. TWE-St. Johns closed in February 2017 due to lack of sales. TWE-Perry and TWE-Haslett are still in business.

4. Each of the three companies maintain separate accounts and accounting records, through an accounting program licensed to each of the companies by their franchisor, Hungry Howie’s. Each company also maintains separate employees and employee records.

5. I produced the driver-employee lists which were provided to the Plaintiffs during discovery in this case. The list for TWE-Perry includes 46 names; however, Dennis Lehman, Matthew Farr, and Michele Follman, were all management employees who only made deliveries during emergencies, when no one else was available. The TWE-Haslett list includes 41 names; however, Jameson Fetting, Krystal Nelson, and Michele Follman, were all management employees who only made deliveries during emergencies, when no one else was available. Lastly, The TWE-St. Johns list includes 30 names; however, Clark Wentz, Jessie Forren, Michele Follman, and Victoria Huntoon, were all management employees who only made deliveries during emergencies, when no one else was available. Further, Matthew DeLong, was inadvertently listed twice on the TWE-St. Johns Driver List.

After removing managers and duplicates, the lists include 43 driver-employees at TWE-Perry, 38 driver-employees at TWE-Haslett, and 25 driver-employees at TWE-St. Johns.

6. Plaintiff Chad McFarlin was a driver-employee only at TWE-Perry. I collected the vehicle information and insurance information from McFarlin's file, which was produced during discovery in this case and is DX-1 to the Brief in Support of Defendant's Response to Plaintiff's Motion for Rule 23 Class Certification. Based upon the information provided by McFarlin himself, he was not the owner of the vehicle he used for deliveries, nor was he the insurer of that vehicle. Opt-in employee records are at DX-2.

7. I also collected vehicle and insurance information for the seventeen employees identified as opt-in Plaintiffs in this case. These opt-in Plaintiffs owned the vehicles they used for deliveries, and insured their own vehicles.

8. Driver-employees at the two operating companies, and TWE-St. Johns, were not paid on the basis of a minimum wage plus vehicle reimbursement. Their compensation was variable, and included several components, all of which together consistently exceeded the applicable minimum wage.

9. At the TWE-Perry company, prior to November 2014, drivers received the minimum wage, plus a \$0.75 delivery fee for each delivery, except for deliveries to the City of Laingsburg, for which a delivery fee of \$1.75 was paid. Multiple

delivery fees could be earned during a single delivery run. Drivers also received all cash and credit card tips, without any crediting against their minimum wage payment. After November 2014, these drivers received a tipped wage of \$5.00 per hour, plus all cash and credit card tips. These drivers also received a delivery fee of \$0.75 per delivery fee, but the Laingsburg delivery fee was raised to \$2.25 per delivery.

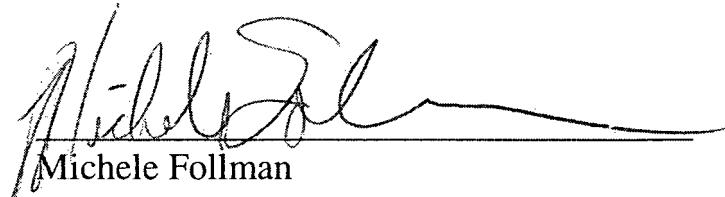
10. At TWE-Haslett and TWE-St. Johns, until November 2014, drivers received a minimum wage, plus a \$0.75 delivery fee, plus all cash and credit card tips. Multiple delivery fees could be earned on a single delivery run, and neither the delivery fees nor tips were discounted against the minimum wage. After November 2014, the drivers received a tipped wage of \$5.00 per hour. All other components of compensation remained the same.

11. For all paydays through April 7, 2016, employees mistakenly were paid twice the amount of their credit card tips. This was due to an error by the accounting firm which processed the payroll for the three companies, and was discovered in April 2016. The last payday in which double credit card tips were paid to employees was April 7, 2016. Driver-employees were not asked to return any portion of these overpayments.

12. After the Complaint was filed in this case, I collected compensation, mileage, and hours worked information for McFarlin, both in-store and on delivery. That information is reflected at DX-12, which is attached to the Brief in Support

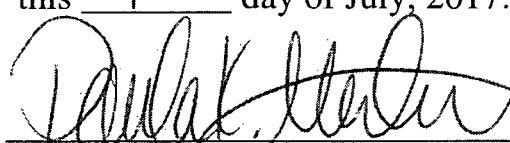
of Defendants' Response to Plaintiffs' Motion for Rule 23 Class Certification. The compensation and hours worked information contained in DX-12 are accurate based on records maintained by TWE-Perry. Because TWE-Perry did not discount cash tips against the minimum wage, the company did not track cash tips received by driver-employees during McFarlin's employment. However, the accounting system currently used by TWE-Perry does track cash tips, and based on actual cash tips received by TWE-Perry driver-employees, I was able to calculate an average cash tip per delivery. Those amounts are accurately reflected on DX-12. The basis for my cash tip calculations is attached to this Affidavit, and incorporated by reference.

Further, affiant sayeth not.



Michele Follman

Subscribed and sworn before me  
this 17th day of July, 2017.



Paula K. Mertins, Notary Public  
Eaton County, Michigan  
Acting in Ingham County, Michigan  
My Commission expires: 11/17/2022

**ATTACHMENT TO AFFIDAVIT**

## Average Cash Tip Calculation

<u>Pay Period</u>	<u>TWE-Perry Employee</u>	<u>Cash Tips</u>	<u>Credit Card Tips</u>	<u>Total Tips</u>	<u>Total Percentage of Cash Tips to Credit Card Tips</u>
11/28/16 – 12/10/16	Brandon Brunette	\$314.35	\$216.48	\$530.83	
11/29/16 – 12/10/16	Evan Buckner	\$103.84	\$145.66	\$249.50	
12/05/16 – 12/11/16	Cameron Cepak	\$243.20	\$128.58	\$371.78	
11/30/16 – 12/11/16	Mark Cooper	\$316.48	\$164.68	\$481.16	
11/28/16 – 12/01/16	Raymond Grabiec	\$42.41	\$32.59	\$75.00	
11/29/16 – 12/10/16	Jeffrey Havens	\$164.84	\$174.52	\$339.36	
11/30/16 – 12/11/16	Andrew Wilson	\$224.18	\$85.82	\$310.00	

**TOTALS**                    \$1,409.30    \$948.33    \$2,357.63    148.61%